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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,796	12/20/2001	Mark S. Franke	KCC-16,487	9402
35844	7590	07/02/2004	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/027,796	Applicant(s) FRANKE ET AL.
	Examiner Karin M. Reichle	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-8,12,13,15-18,38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-8,12,13,15-18,38 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The FINAL mailed 3-16-04 is withdrawn in light of newly found prior art. An action on the merits including such art follows.

Drawings

2. The drawings were received on 5-17-04. These drawings are not approved by the Examiner. Figures 6B and 10 are still not consistent with page 31, lines 18-20, i.e. bond 86 should be shown extending from 68a to 68b not as now shown and in Figure 10, 88 also should be deleted.

3. The drawings are objected to because Figure 4A should be labeled "PRIOR ART", see page 4, line 12. In Figure 1, the lines from 53-54, 56 and 58 should be dashed to denote underlying structure. In Figure 4B, 86 should be shown attached to the portion of 134 to the left thereof. This also applies to 82 in Figure 5 and 86 in Figure 8. In Figure 6A, 84 should be 82. In Figure 6B, 86 is not shown accurately. This also applies to Figure 10. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief

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description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

5. The disclosure is objected to because of the following informalities: In the Figures, i.e. Figures 6B and 10, what is 88? Appropriate correction is required.

Claim Language Interpretation

6. "Bonded" and "connected" are defined as set forth on page 5, lines 16 et seq. and page 6, lines 1-2. It is specifically noted that "bonded" and "connected" refers to both bonding and connecting which is direct and that which is indirect. "Disposable" is defined as set forth on page 6, lines 7-8. "Ribbon cover" is defined as set forth on page 11, lines 10-12. "Elastic" is defined as set forth on page 6, lines 10-14. "Disposable article", "absorbent garment", and

“personal care garment” are defined as set forth on page 13, line 19-page 14, line 1. The terminology “side seam” is defined on page 11, lines 17-19.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 2-3, 5-8, 12, 15, 18, 38 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Chupa ‘123.

With regard to claims 2, 5-8, 12, 38 and 39: See Claim Language Interpretation section supra, title, abstract, Figures 1-3, and 9-13, col. 1, lines 47-56, col. 2, lines 50-60, col. 3, lines 5-43, col. 4, line 26-col. 5, line 50, col. 5, line 65-col. 6, line 43, i.e. garment is 10, front region adjacent the numeral 10 in the front, rear region is adjacent numeral 10 in the rear, the crotch region is therebetween, side panels are adjacent 30, 32, side seams are 12, 18, 36, 38, ribbon cover is 214 or 216 or both. Attention is again directed to the claim language interpretation section supra, i.e. “bonded” can be direct or indirect, i.e. the ribbon cover(s) are bonded directly or indirectly to every other portion of the garment. It is also noted that the claims do not require the or each ribbon cover cover the entire side seam and only extend from the waist opening to the leg opening, i.e. can’t be longer than the seam. The ribbon covers are at least about ½ inch in the width dimension, i.e. at least about 12.7 mm, and the seams are about ½ inch in the width dimension, i.e. about 12.7 mm, and thereby the ribbon cover extends beyond a side edge of the side seam at least about 0 mm, i.e. includes 2 mm and 0 mm to 15mm. With regard to the language “personal care garment” in the preamble see the cited portions of Chupa. It is the

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examiner's first position that the reference explicitly teaches a personal care garment in as much as that term has been defined. In any case, the Examiner's second position, the recitation "personal care" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

With regard to claim 3: The terminology "about" allows some leeway from the dimension it modifies. Therefore, the width of 12.7 mm, see discussion supra, is deemed "about" 10 mm.

With regard to claims 15 and 18: See discussion supra. With regard to the preamble, see col. 5, lines 23-32, i.e. infers the remainder of the article alone or the bindings as well may be made of non-washable material, i.e. "disposable".

9. Claims 2-8, 12, 38 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Blackburn '182.

With regard to claims 5-8, 12, 38 and 39: See Claim Language Interpretation section supra, title, abstract, Figures 1 and 4, col. 1, lines 6-7, col. 4, lines 25-33 and 47-54, col. 7, line 38-col. 8, line 4, sentence bridging cols. 8-9 and Table I, i.e. garment, front region, rear region, and crotch region is 50, side panels are adjacent 12, 14, side seams are 78, 20, 22, and ribbon cover is 38. Attention is again directed to the claim language interpretation section supra, i.e. "bonded" can be direct or indirect, i.e. the ribbon cover(s) are bonded directly or indirectly to

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every other portion of the garment. It is also noted that the claims do not require the or each ribbon cover cover the entire side seam and only extend from the waist opening to the leg opening, i.e. can't be longer than the seam. The ribbon covers are at least about ½ inch in the width dimension, i.e. at least about 12.7 mm, and extend beyond line 34 at least about ¼ inch, i.e. about 6.35 mm, i.e. includes 2 mm and 0 mm to 15mm. With regard to the language “personal care garment” in the preamble see the cited portions of Blackburn. It is the Examiner's first position that the reference explicitly teaches a personal care garment in as much as that term has been defined. In any case, the Examiner's second position, the recitation “personal care” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

With regard to claims 2-4: The terminology “about” allows some leeway from the dimension it modifies. As seen in Figures 1 and 3, the width of the side seam, i.e. between the outermost dashed lines in Figure 3, is about 1/3 of the width of tape 38 and as disclosed at col. 7, line 38-col. 8, line 4, the width W is at least about 12.7 mm, see discussion supra, i.e. the seam is at least about 4.2 mm.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chupa '123 in view of Stopper et al '290.

Applicants claim the ribbon cover is bonded ultrasonically in claim 12 and the panels and/or ribbon covers comprise an elastic material which Chupa does not explicitly teach. However see the portions cited supra which teach that the strips can be the same material as the garment and all can be disposable material and that the purpose of the garment is to provide a soft, non-irritating, appearance enhanced hospital care garment. See also Stopper et al at abstract, col. 1, lines 38-42, col. 2, lines 48-51, col. 3, lines 55-65, col. 8, lines 61-66, col. 10, lines 27-40, i.e. a highly elastic knit like composite having highly pleasing aesthetic and tactile properties for use in a disposable hospital care garment. To make the hospital care garment of Chupa from the highly elastic knit like composite, if not already, as taught by Stopper et al would be obvious to one of ordinary skill in the art in view of the recognition that such would provide an aesthetically pleasing and physically comfortable garment and the desirability of Chupa to provide a soft, non-irritating appearance enhanced garment. It is noted that claim 13 does not require the ribbon cover be bonded to the panel ultrasonically but merely be bonded ultrasonically somehow and the modified Chupa device would include a ultrasonically bonded material as the ribbon covers.

Response to Arguments

12. Applicant's remarks have been considered but are either deemed moot in that the issue discussed has not been reraised or are deemed not persuasive for the reasons discussed supra.

Conclusion

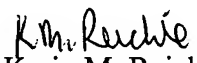
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. It is noted that the Blackburn also teaches that the tape may be affixed by elevated temperature interpenetration although such is not explicitly disclosed as ultrasonic bonding. Note also again Bisbis and Langley references already of record. While Blackburn does not explicitly teach a "disposable" protective garment the Bartasis reference teaches a protective garment of materials like Blackburn which is disposable. The two newly cited Guinzburg references teach ribbon covers in a rubber pant.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
June 29, 2004